



SUBMITTED STATEMENT FOR THE RECORD OF
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SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
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UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON
UNDOING THE DAMAGE OF THE WAR ON DRUGS: A RENEWED CALL FOR SENTENCING REFORM

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UNDOING THE DAMAGE OF THE WAR ON DRUGS: A RENEWED CALL FOR SENTENCING REFORM

Chairwoman Jackson Lee, Ranking Member Biggs, and Members of the Committee:

Thank you for the invitation to testify today. My name is Jillian E. Snider, and I am the director of criminal justice and civil liberties policy at the R Street Institute, which is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including criminal justice reform, and that is why today's hearing is of special interest to us.

In addition to my current role, I am also a Lecturer at John Jay College of Criminal Justice and a retired police officer from the New York City Police Department. I am here to speak to you today about the critical nature of bipartisan support for the EQUAL Act. Current drug prohibition has resulted in an overreliance on enforcement, arrests and incarceration—which has had a disproportionate impact on Black and Brown men in urban communities.¹

The crack epidemic of the 1980s triggered an aggressive enforcement approach, initially established to decrease the spread of drug-related diseases and deaths, and to combat organized crime. Cocaine, and its derivative crack cocaine, is dangerous, has a high potential for abuse, and may lead to severe psychological or physical dependence.² The chemical composition of powder cocaine and crack cocaine are nearly identical, and both produce similar results when ingested. The only true variation between the two is the method of consumption: powder cocaine is typically snorted, injected, or swallowed, while crack cocaine is smoked.

The 1986 Anti-Drug Abuse Act created a disparity between the amount of crack cocaine and the amount of powder cocaine that triggers a federal mandatory minimum sentence. This meant that 5 grams of crack mandated a five-year sentence, while 500 grams of powder cocaine was the threshold for the same sentence. The 2010 Fair Sentencing Act was a positive step in reducing this disparity, but the time has come to do away with the disparity altogether, because, as we know, there are no significant differences between the two forms.

Our criminal justice system is not a one-size-fits-all solution. For far too long now, the United States has relied on a system of overcriminalization, in which we overuse—and at times misuse—criminal law to address societal problems that could be more effectively handled through civil channels or other institutions. This is evident by our nation's present incarcerated population, which boasts approximately 2.3 million individuals.³

Law enforcement strategies and sentencing policies of the War on Drugs era is one of the biggest contributors to this level of mass incarceration, with the number of Americans imprisoned for drug offenses reaching more than 430,000 in 2019.⁴ An overwhelming 92 percent of individuals in federal prison have a drug offense as their most serious criminal charge.⁵

Law-makers assumed that the use or sale of drugs had a causal effect on both theft and violence, inspiring stricter penalties on drug-related offenses to deter future criminal activity. Research and evidence-based findings indicate this is not the case. Increased incarceration has demonstrated only a small impact on crime rates, and the majority of crime reduction benefits are only related to property crimes.⁶ Drug abuse, specifically the use of cocaine or heroin, while consistent with patterns of income-generating crime like burglary and larceny, are not significantly correlated with violent crime.⁷ A recent cross-sectional analysis of more than 7,000 prisoners indicates that binge consumption of alcohol is more closely correlated to violent crime than the use of cocaine.⁸

Approximately 35 percent of federal drug offenders fall within the U.S. Sentencing Commission Category I for criminal history, meaning these individuals have no previous terms of imprisonment or extremely minimal criminal records. Additionally, of individuals with linked U.S. Sentencing Commission records, less than 5 percent have a violent crime as their most serious offense.⁹ Less than 25 percent of federally sentenced drug offenders possessed an illegal firearm in the instant matter.¹⁰

In recent years, many states have modified their drug sentencing laws by reclassifying and downgrading drug offenses and by increasing the quantity thresholds necessary to raise the offense to felony-level.¹¹ In many states, there is no difference in statutory penalties between powder cocaine and crack cocaine. In New York, for example, the two are treated the same, recognized in the state penal law as “controlled substances.”¹²

While it is a collective belief that drug abuse in the United States is a serious problem, a national survey found that 67 percent of Americans—including self-identified Republicans, Democrats and Independents—believe the government should focus more on providing treatment for those who use illegal drugs as opposed to harsher prosecution.¹³ National law enforcement organizations, such as the Law Enforcement Action Partnership, recognize that drugs are both dangerous and potentially addictive, but believe drug abuse is a public health problem and should not be solely a law enforcement matter.¹⁴

The United States relies on the principles of justice and equality for all. The differential enforcement of narcotics over the past fifty years has clearly demonstrated that the law has not been equally applied. The “War on Drugs” resulted in the arrest and sentencing of tens of thousands of individuals, resulting in the disruption of families, the loss of housing and potential employment, and ultimately the loss of many years for an often victimless, socially intolerable behavior. Strict enforcement and punitive punishment have not been a successful deterrent, and may be counterproductive: they limit opportunity, resulting in a repetitive cycle of abuse and incarceration. What we need is reform that calls for equal sentencing, less disciplinary penalties, and a more rehabilitative and humane approach. That is why support for the EQUAL Act cannot be mired in partisan politics: lives are at stake. Instead, the EQUAL Act must continue to be bipartisan as you strive to solve part of this ongoing crisis.

Thank you to the Subcommittee on Crime, Terrorism, and Homeland Security for holding this hearing. If I can be of any assistance to members of the Committee, please feel free to contact me or my colleagues at the R Street Institute.

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¹ Betsy Pearl, "Ending the War on Drugs: By the Numbers," Center for American Progress, June, 27, 2018. <https://www.americanprogress.org/issues/criminal-justice/reports/2018/06/27/452819/ending-war-drugs-numbers>.

² "Drug Scheduling," United States Drug Enforcement Administration, last accessed June 15, 2021. <https://www.dea.gov/drug-information/drug-scheduling>.

³ Wendy Sawyer and Peter Wagner, "Mass Incarceration: The Whole Pie 2020," Prison Policy Initiative, March 24, 2020. <https://www.prisonpolicy.org/reports/pie2020.html>.

⁴ "Criminal Justice Facts," The Sentencing Project, 2020. <https://www.sentencingproject.org/criminal-justice-facts>.

⁵ Bureau of Justice Statistics, "Drug Offenders in Federal Prison: Estimates of Characteristics Based on Linked Data," U.S. Dept. of Justice, October 2015. <https://bjs.ojp.gov/content/pub/pdf/dofp12.pdf>.

⁶ Don Stemen, "The Prison Paradox: More Incarceration Will Not Make Us Safer," Vera Institute of Justice, July 2017. https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf.

⁷ Denise C. Gottfredson, et al., "Substance Use, Drug Treatment, and Crime: An Examination of Intra-Individual Variation in a Drug Court Population," *Journal of Drug Issues* 38:2 (April 2008). <https://journals.sagepub.com/doi/10.1177/002204260803800211>.

⁸ Anders Hakansson and Virginia Jesionowska, "Associations Between Substance Use and Type of Crime in Prisoners with Substance Use Problems – A Focus on Violence and Fatal Violence," *Substance Abuse and Rehabilitation* 9 (January 2018). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5774467/pdf/sar-9-001.pdf>.

⁹ Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/dofp12.pdf>.

¹⁰ Ibid.

¹¹ Don Stemen, "Beyond the War: The Evolving Nature of the U.S. Approach to Drugs," *Harvard Law & Policy Review* 11:2 (June 2017). https://ecommons.luc.edu/cgi/viewcontent.cgi?article=1026&context=criminaljustice_facpubs.

¹² "The Laws of New York: Part 3 Specific Offenses," The New York State Senate, last accessed Jun 15, 2021. <https://www.nysenate.gov/legislation/laws/PEN/220.00>.

¹³ "America's New Drug Policy Landscape," Pew Research Center, April 2014. <https://www.pewresearch.org/politics/2014/04/02/americas-new-drug-policy-landscape>.

¹⁴ "Drug Policy: War on Drugs," Law Enforcement Action Partnership, October 2018. <https://lawenforcementactionpartnership.org/our-issues/drug-policy>.